

Supreme Court Issues
Cases Not Yet Set & April Term 2021
July 9, 2021

- Appeal and Error—Capacity or Right to Sue or Defend—Persons Entitled to Sue—Objection at Trial—Necessity.
- Automobiles—Automobile as Living Place—Impoundment—Fine—Excessiveness.
- Automobiles—Automobile as Living Place—Impoundment—Homestead Act—Applicability—Failure to File Declaration of Homestead—Effect.
- Bail—Bail Jumping—Elements—Knowing Failure to Appear “As Required”—Knowledge of Specific Date of Required Appearance—Jury Instructions—To-Convict Instruction—Adequacy.
- Contracts—Breach—Construction Contracts—Defense—Defective Specifications—Jury Instructions.
- Courts—Remedies—Nature and Form—Class Action—Challenge to Claimed System-Wide Speed Zone Violation—Vacation of Traffic Infraction—Necessity.
- Criminal—Misdemeanor—Complaint—Citizen Complaint—Initiation—Affidavit—Statute of Limitations.
- Criminal Law—Attempted Child Rape—Affirmative Defenses—Entrapment—Instruction—Entitlement—Defendant’s Burden—Quantum of Supporting Evidence.
- Criminal Law—Attempted Child Rape—Evidence—Entrapment—Lack of Predisposition—Absence of Prior Child Sex Crime Convictions—Admissibility.
- Criminal Law—Automobiles—Driving Under the Influence—Marijuana—Proof—Per Se Violation—Blood THC Concentration—Police Power—Vagueness.
- Criminal Law—Bail Jumping—Trial—Evidence—Sufficiency—Knowledge of Date of Required Appearance.
- Criminal Law—Burglary—Elements—Knowledge of Entering or Remaining Unlawfully.
- Criminal Law—Burglary—Trafficking in Stolen Property—Evidence—Prior Acts—Interview Related to Prior Burglary—Admissibility.
- Criminal Law—Crimes—Animal Cruelty—Domestic Violence—Applicability.
- Criminal Law—Evidence—Search and Seizure—Consent Search of Cell Phone—Use of Text Messages in Subsequent Communication—Trespassory Invasion of Privacy.
- Criminal Law—Evidence—Search and Seizure—Consent Search of Cell Phone—Use of Text Messages in Subsequent Communication—Third Party.
- Criminal Law—Evidence—Search and Seizure—Search Warrant for Cell Phone Records—Validity—Probable Cause—Nexus to Charged Offenses.
- Criminal Law—First Degree Murder—Juvenile Offender—De Facto Life Sentence—Cruel Punishment.

- Criminal Law—Guilty Plea—Whether Knowing, Intelligent, and Voluntary—Ascertainment by Court—Informing Accused of Elements of Offense—Adequacy.
- Criminal Law—Homicide—Self-Defense—Imminence or Immediacy of Danger—Reasonableness of Belief or Apprehension—Evidence—Victim Toxicology Report—Exclusion—Right to Present Defense.
- Criminal Law—Juvenile Offenders—Collection of Biological Samples—DNA Analysis—Deferred Felony Disposition—Statutory Requirement.
- Criminal Law—Legal Financial Obligations—Indigent Defendant—Community Custody Supervision Fees—Validity—Interest.
- Criminal Law—Obstruction of Justice—Obstructing Law Enforcement Officer—Home Entry—Willful Refusal to Allow Entry—Community Caretaking Function—Validity.
- Criminal Law—Plea of Guilty—Plea Bargaining—Breach by State—Duty of State—Implied Duty of Good Faith and Fair Dealing—Applicability.
- Criminal Law—Punishment—Sentence—Indeterminate Sentence Predating SHB 1457—Setting of Minimum Sentence Under SHB 1457—Validity—Ex Post Facto Law.
- Criminal Law—Punishment—Sentence—Juvenile Offenders—*Houston-Sconiers* Case—Actual and Substantial Prejudice.
- Criminal Law—Punishment—Sentence—Juvenile Offenders—*Miller v. Alabama*—*Miller-Fix*—Indeterminate Sentence Review Board—Petition for Early Release—Factors.
- Criminal Law—Punishment—Sentence—Offender Score—Criminal History—Convictions for Possession of a Controlled Substance—*Blake* Decision—Effect.
- Criminal Law—Punishment—Sentence—Presentence Confinement—Credit—Time Served Out of State.
- Criminal Law—Residential Burglary—Lesser Included Offense—First Degree Criminal Trespass—Jury Instructions—To-Convict Instruction—Instruction Defining “Knowledge”—Conflict—State’s Burden of Proof.
- Criminal Law—Right to Counsel—Ineffective Assistance of Counsel—Strategy and Tactics—Evidence—Other Acts and Offenses—Hearsay Statements—Opinion on Guilt—Testimony that Witnesses Were Threatened—Failure to Object—Prejudice.
- Criminal Law—Sex Offenses—Evidence—Prior Acts—Admissibility—Permissible Purpose—Lustful Disposition Toward Victim—Propriety.
- Criminal Law—Sexual Offenses—Punishment—Sentence—Community Custody—Conditions—Reporting Dating Relationship—Validity—Vagueness.
- Criminal Law—Trial—Misconduct of Prosecutor—Arguments to Jury—False Choice—Telling Jury to Decide Whether Witnesses Lied.
- Declaratory Judgment—Common Interest Communities—Covenants—Corporations and Business Organizations—Business Judgment Rule—Applicability—Assessment Structure—Reasonableness.

- Declaratory Judgment—Federal Enabling Act—State Constitution—Public Lands—Management Duty—Scope.
- Declaratory Judgment and Injunctive Relief—Motion to Dismiss—Municipal Ordinance—Food Delivery Drivers—Hazard Pay—Validity—State Tax Law—Constitutional Principles—Police Powers—Takings—Impairment of Contracts—Equal Protection—Privileges and Immunities—Civil Rights.
- Elections—Fair Campaign Practices—Disclosure Requirements—Violation—Fines—Treble Damages—Excessiveness.
- Employment—Safe Workplace—Employer of Temporary Worker—Duty of Referring Agency.
- Environment—State Environmental Policy Act—Environmental Assessment—Conversion of Fish Farming Operation from One Species to another—Consideration of “No Action” Alternative—Necessity.
- Indians—Federal Treaties—Water Law—Water Rights and Management—Tribal Water Rights on Reservation—Diversion of Water to Particular Parcels.
- Indians—Infants—Dependent Children—Interim Shelter Care Proceeding—Emergency Placement—Continued Out-of-Home Placement—Imminent Physical Danger or Harm.
- Indians—Infants—Dependent Children—Shelter Care Proceeding—Child Custody Proceeding—Efforts and Compliance by Government or Agency—“Active Efforts” Requirement—Applicability.
- Insurance—Consumer Protection—Acts of Insurer—Right of Action—Filed Rate Doctrine—Effect—Applicability.
- Juveniles—Parental Relationship—Dependency—Placement—Child’s Preference—Relatives—Denial—Validity.
- Juveniles—Parental Relationship—Termination—Elements—Services “Reasonably Offered”—Parent’s Alleged Cognitive Impairments—Tailored Services—Professional Cognitive Assessment—Necessity.
- Juveniles—Termination of Parental Rights—Case Title—Changing Title in Court of Appeals—Use of Parents’ Full Names in Case Title—Open Courts—Right to Privacy.
- Labor and Employment—Labor Strike—National Labor Relations Act—Tort Claims—Property Destruction—Federal Preemption.
- Labor and Employment—Labor Strike—Tort Claims—Fraudulent Representation—Negligent Representation—Statement of Existing Fact—Intentional Interference with a Business Contract—Causation.
- Landlord and Tenant—Actions—Forcible Entry and Detainer—Availability—Early Termination of Lease.
- Law Against Discrimination—Real Property Instruments—Discriminatory Provisions—Declaratory Action to Remove—Physical Removal From Instrument—Necessity.
- Negligence—Premises Liability—Business Premises—Knowledge of Danger—Knowledge or Notice in General—Foreseeability Exception—Applicability.

- Negligence—Wrongful Death—Duty—Existence—Breach of Duty—Proximate Causation.
- Open Government—Public Disclosure—Exemptions—Other Statutory Exemptions—Personal Information—In-Home Caregivers—Retroactivity.
- Personal Injury—Parks and Recreation—Statutory Immunity—Elements—Latent Condition—Summary Judgment.
- Personal Restraint—Prisons—Conditions—Cruel Punishment—COVID-19.
- *Products Liability—Manufacturer—Duty to Warn—Medical Product—Prescription Only—Direct to Consumer Marketing—Learned Intermediary Doctrine—Applicability.
- Right to Counsel—Effective Assistance of Counsel—Conflict of Interest—Failure to Move to Suppress—Failure to Make Legal Argument—Negative Comment on Defendant’s Pro Se Motion to Suppress.
- Searches and Seizures—Open View—Immediate Recognition—Necessity—“Virtual Certainty.”
- Statutes—Elections—Counties—Ballot Drop Boxes— State Reimbursement—Unfunded Mandate—Revision—Amendment by Reference—Prohibition.
- Statutes—Standing—Representational Standing—Taxation—Business and Occupation Tax—Surtax—Validity—Dormant Commerce Clause.
- Statutes—Veto—Partial or Item Veto—“Section”—Legislative Designation—Effect—Appropriation Items—What Constitutes—Budget Provisos—Appropriation—Validity—Substantive Law.
- Trial—Due Process—Fair Trial—Implicit Bias—Motion for New Trial—Evidentiary Hearing—Necessity.
- Unlawful Detainer—Lease—Expiration—COVID-19—Centers for Disease Control—Eviction Moratorium—Applicability.

Cases Not Yet Set

Bail—Bail Jumping—Elements—Knowing Failure to Appear “As Required”—Knowledge of Specific Date of Required Appearance—Jury Instructions—To-Convict Instruction—Adequacy

Whether in this prosecution for bail jumping, a to-convict instruction stating that the jury had to find that the defendant failed to appear on a specific date after having been released “with knowledge of the requirement of a subsequent personal appearance before the court” adequately required the jury to find that the defendant had knowledge of the date he was required to appear, and if not, whether any error in the instruction was harmless beyond a reasonable doubt.

No. 99347-5, *State* (petitioner) *v. Bergstrom* (respondent). (See also: [Criminal Law—Bail Jumping—Trial—Evidence—Sufficiency—Knowledge of Date of Required Appearance](#)).

15 Wn. App. 2d 92 (2020).

[Top](#)

Criminal Law—Attempted Child Rape—Affirmative Defenses—Entrapment—Instruction—Entitlement—Defendant’s Burden—Quantum of Supporting Evidence

Whether, in a prosecution for attempted child rape stemming from an undercover police operation, the defendant was entitled to a jury instruction on the defense of entrapment on the basis “some substantial evidence” established a prima facie case of entrapment without having to show the evidence was sufficient to establish the elements of entrapment by a preponderance of the evidence.

No. 99452-8, *State* (petitioner) *v. Arbogast* (respondent). (See also: [Criminal Law—Attempted Child Rape—Evidence—Entrapment—Lack of Predisposition—Absence of Prior Child Sex Crime Convictions—Admissibility](#)).

15 Wn. App. 2d 851 (2020).

[Top](#)

Criminal Law—Attempted Child Rape—Evidence—Entrapment—Lack of Predisposition—Absence of Prior Child Sex Crime Convictions—Admissibility

Whether, in a prosecution for attempted child rape, the defendant was entitled to the admission of evidence that he had no prior child sex offense convictions for the purpose of proving the element of his entrapment defense that he lacked a predisposition to commit the charged offense.

No. 99452-8, *State* (petitioner) *v.* *Arbogast* (respondent). (See also: [Criminal Law—Attempted Child Rape—Affirmative Defenses—Entrapment—Instruction—Entitlement—Defendant’s Burden—Quantum of Supporting Evidence](#)).

[15 Wn. App. 2d 851 \(2020\)](#).

[Top](#)

Criminal Law—Automobiles—Driving Under the Influence—Marijuana—Proof—Per Se Violation—Blood THC Concentration—Police Power—Vagueness.

Whether the per se marijuana driving under the influence (DUI) statute, [RCW 46.61.502\(1\)\(b\)](#), under which a person is guilty of DUI if the person has a blood THC concentration of 5 ng/mL or higher within two hours of driving, is invalid as an unconstitutional exercise of the State’s police power or because the statute is vague.

No. 98896-0, *State* (respondent) *v.* *Fraser* (petitioner).

[Top](#)

Criminal Law—Bail Jumping—Trial—Evidence—Sufficiency—Knowledge of Date of Required Appearance

Whether in this prosecution for three counts of bail jumping, the evidence as to one count was sufficient to support a finding that the defendant knew he was to appear on a specified date.

No. 99347-5, *State* (petitioner) *v.* *Bergstrom* (respondent). (See also: [Bail—Bail Jumping—Elements—Knowing Failure to Appear “As Required”—Knowledge of Specific Date of Required Appearance—Jury Instructions—To-Convict Instruction—Adequacy](#)).

[15 Wn. App. 2d 92 \(2020\)](#).

[Top](#)

Criminal Law—Crimes—Animal Cruelty—Domestic Violence—Applicability

Whether in this criminal prosecution for animal cruelty, the State may apply a domestic violence designation under [RCW 10.99.010](#) for purposes of enhanced sentencing and the procurement of a victim protection order on the basis the defendant brutally kicked and killed a dog belonging to his household member.

No. 99581-8, *State* (petitioner) *v.* *Abdi-Issa* (respondent).

[Unpublished](#).

[Top](#)

Criminal Law—First Degree Murder—Juvenile Offender—De Facto Life Sentence—Cruel Punishment

Whether a prison sentence of 736 months (61.3 years) imposed on an offender for two counts of first degree murder committed when he was 17 constitutes cruel punishment in violation of article I, section 14 of the Washington Constitution.

No. 97890-5, *State* (respondent) *v.* *Anderson* (petitioner).

[Top](#)

Criminal Law—Guilty Plea—Whether Knowing, Intelligent, and Voluntary—Ascertainment by Court—Informing Accused of Elements of Offense—Adequacy

Whether in this prosecution for failure to register as a sex offender in which the defendant pleaded guilty, the trial court failed to adequately inform the defendant of the elements of the offense the State had to prove, making the guilty plea not knowing, intelligent, and voluntary.

No. 99310-6, [State \(respondent\) v. Snider \(petitioner\)](#).

[Unpublished.](#)

[Top](#)

Criminal Law—Homicide—Self-Defense—Imminence or Immediacy of Danger—Reasonableness of Belief or Apprehension—Evidence—Victim Toxicology Report—Exclusion—Right to Present Defense

Whether in this prosecution for second degree felony murder, the trial court violated the defendant's right to present a defense under the standard of review articulated in [State v. Arndt](#), 194 Wn.2d 784, 797, 453 P.3d 696 (2019), by excluding the victim's toxicology report, which the defendant intended to use in support of his claim of self-defense.

No. 99337-8, [State \(respondent\) v. Jennings \(petitioner\)](#). (See also: [Criminal Law—Punishment—Sentence—Offender Score—Criminal History—Convictions for Possession of a Controlled Substance—Blake Decision—Effect](#)).

[14 Wn. App. 2d 779 \(2020\)](#).

[Top](#)

Criminal Law—Juvenile Offenders—Collection of Biological Samples—DNA Analysis—Deferred Felony Disposition—Statutory Requirement

Whether [RCW 43.43.754\(l\)\(a\)](#), which provides that a biological sample must be collected for DNA identification analysis from every “adult or juvenile individual convicted of a felony,” requires collection from a juvenile who has received a deferred felony disposition.

No. 99374-2, [State \(respondent\) v. M.Y.G. \(petitioner\)](#).

consolidated with

No. 99379-3, [State \(respondent\) v. I.A.S. \(petitioner\)](#).

[15 Wn. App. 2d 641 \(2020\)](#).

[15 Wn. App. 2d 634 \(2020\)](#).

[Top](#)

Criminal Law—Obstruction of Justice—Obstructing Law Enforcement Officer—Home Entry—Willful Refusal to Allow Entry—Community Caretaking Function—Validity

Whether the State validly prosecuted a defendant for obstruction of justice when the defendant refused to open his residence to police seeking to make a warrantless entry based on a report of domestic violence.

No. 98622-3, [State \(respondent\) v. Jenkins \(petitioner\)](#).

[Top](#)

Criminal Law—Punishment—Sentence—Indeterminate Sentence Predating SHB 1457—Setting of Minimum Sentence Under SHB 1457—Validity—Ex Post Facto Law

Whether SHB 1457, Laws of 1989, chapter 259, under which the Indeterminate Sentencing Review Board was required to set minimum terms consistent with the Sentencing Reform Act for offenders serving indeterminate sentences, violates constitutional ex post facto principles on its face or as applied to an offender who was eligible for parole in 20 years under his original sentence but received a minimum term of 60 years under SHB 1457.

No. 98917-6, *In re Pers. Restraint of Gallegos* (petitioner).

[Top](#)

Criminal Law—Punishment—Sentence—Juvenile Offenders—*Houston-Sconiers* Case—Actual and Substantial Prejudice

Whether two defendants who were convicted and sentenced while juveniles in the adult criminal justice system were actually and substantially prejudiced at sentencing in light of the supreme court's retroactively applicable decision in [State v. Houston-Sconiers](#), 188 Wn.2d 1, 391 P.3d 409 (2017), holding that in sentencing juveniles tried as adults the trial court has discretion to depart from the sentencing guidelines and mandatory sentence enhancements considering the mitigating circumstances of a defendant's youth.

No. 95217-5, *In re Pers. Restraint of Vincent* (petitioner).

Consolidated with:

No. 95439-9, *In re Pers. Restraint of Carter-Vincent* (petitioner).

[Top](#)

Criminal Law—Punishment—Sentence—Juvenile Offenders—*Miller v. Alabama*—*Miller-Fix*—Indeterminate Sentence Review Board—Petition for Early Release—Factors

Whether in this offender’s petition for early release pursuant to [RCW 9.94A.730](#) for crimes committed as a juvenile, the Indeterminate Sentence Review Board considered improper factors in denying release.

No. 98078-1, *In re Pers. Restraint of Dodge* (petitioner).

[Top](#)

Criminal Law—Punishment—Sentence—Offender Score—Criminal History—Convictions for Possession of a Controlled Substance—*Blake* Decision—Effect

Whether, in light of the court’s decision in [State v. Blake, 197 Wn.2d 170, 481 P.3d 521 \(2021\)](#), where the court held unconstitutional Washington’s strict liability drug possession statute, the defendant in this case must be resentenced because his offender score included prior convictions for drug possession.

No. 99337-8, *State* (respondent) *v. Jennings* (petitioner). (See also: [Criminal Law—Homicide—Self-Defense—Imminence or Immediacy of Danger—Reasonableness of Belief or Apprehension—Evidence—Victim Toxicology Report—Exclusion—Right to Present Defense](#)).

14 Wn. App. 2d 779 (2020).

[Top](#)

Criminal Law—Trial—Misconduct of Prosecutor—Arguments to Jury—False Choice—Telling Jury to Decide Whether Witnesses Lied

Whether in this prosecution for sex offenses committed against a child, the prosecutor committed misconduct in arguing that the jury had to decide whether the complaining witness or the defense witnesses were lying.

No. 99396-3, *State* (petitioner) *v.* *Crossguns* (respondent/cross-petitioner). (See also: [Criminal Law—Sex Offenses—Evidence—Prior Acts—Admissibility—Permissible Purpose—Lustful Disposition Toward Victim—Propriety](#)).

[Unpublished.](#)

[Top](#)

Declaratory Judgment—Federal Enabling Act—State Constitution—Public Lands—Management Duty—Scope

Whether in this declaratory judgment action brought under article XVI, section 1 of the Washington Constitution, which provides that public lands are held in trust for “all the people,” the Commissioner of Public Lands and the Washington State Department of Natural Resources have the constitutional authority and obligation to manage the state’s federally-granted lands in a manner that is consistent with the best interest of all Washington citizens or exclusively in the best economic interest of select institutional beneficiaries.

No. 99183-9, *Conservation Nw., et al.* (appellants) *v.* *Comm’r of Pub. Lands, et al.* (respondents).

[Top](#)

Declaratory Judgment and Injunctive Relief—Motion to Dismiss—Municipal Ordinance—Food Delivery Drivers—Hazard Pay—Validity—State Tax Law—Constitutional Principles—Police Powers—Takings—Impairment of Contracts—Equal Protection—Privileges and Immunities—Civil Rights.

Whether for purposes of deciding a motion to dismiss an action for declaratory and injunctive relief for failure to state a claim under [CR 12\(b\)\(6\)](#), plaintiffs made cognizable claims that Seattle City Ordinance No. 126094, which requires that food delivery drivers be compensated with hazard pay for deliveries made within the city of Seattle while the city’s COVID-19 public health emergency is still in effect, (1) constitutes imposition of a tax, fee, or assessment on groceries in violation of [RCW 82.84.040\(1\)](#); (2) exceeds the city’s police powers; (3) effects an unconstitutional taking of property without compensation; (4) impairs contractual obligations in violation of the United States Constitution and Washington Constitution; (5) violates equal protection principles under the United States Constitution; (6) violates the prohibition against privileges or immunities under the Washington Constitution; and (7) violates a plaintiff’s civil rights under 42 U.S.C. § 1983.

No. 99771-3, *Wash. Food Indus. Ass’n., et al. (respondents/cross-petitioners) v. City of Seattle (petitioner/cross-respondent)*.

[Top](#)

Elections—Fair Campaign Practices—Disclosure Requirements—Violation—Fines—Treble Damages—Excessiveness.

Whether an \$18 million fine, imposed in this case for intentional violation of Fair Campaign Practices Act funding disclosure provisions, is unlawful as an excessive fine under the Eighth and Fourteenth Amendments.

99407-2, *State v. Grocery Mfrs. Ass’n*.

[15 Wn. App. 2d 290, 475 P.3d 1062 \(2020\)](#).

[Top](#)

Environment—State Environmental Policy Act—Environmental Assessment—Conversion of Fish Farming Operation from One Species to another—Consideration of “No Action” Alternative—Necessity

Whether in conducting an environmental review of a petition to farm Pacific steelhead in existing Puget Sound aquatic farming nets previously used to farm Atlantic salmon, the Department of Fish and Wildlife was required to consider a “no action” alternative under [RCW 43.21C.030\(2\)\(e\)](#) of the State Environmental Policy Act.

No. 99263-1, *Wild Fish Conservancy, et al.* (petitioner) v. *Dep’t of Fish & Wildlife & Cooke Aquaculture Pacific, LLC*, (respondents).

[Top](#)

Indians—Infants—Dependent Children—Interim Shelter Care Proceeding—Emergency Placement—Continued Out-of-Home Placement—Imminent Physical Danger or Harm

Whether under the Indian Child Welfare Act and the Washington Indian Child Welfare Act, the superior court is required to make a finding on the record that emergency placement is necessary to prevent imminent physical danger or harm to the child before ordering continued out-of-home placement at an interim shelter care hearing.

No. 99481-1, *In re the Welfare of J.M.W.* (petitioner). (See also: [Indians—Infants—Dependent Children—Shelter Care Proceeding—Child Custody Proceeding—Efforts and Compliance by Government or Agency—“Active Efforts” Requirement—Applicability](#)).

[Top](#)

Indians—Infants—Dependent Children—Shelter Care Proceeding—Child Custody Proceeding—Efforts and Compliance by Government or Agency—“Active Efforts” Requirement—Applicability

Whether a shelter care proceeding is a “child custody proceeding” under the Indian Child Welfare Act and the Washington Indian Child Welfare Act, requiring the State to demonstrate that it made active efforts to provide services to prevent the breakup of the Native family.

No. 99481-1, *In re the Welfare of J.M.W.* (petitioner). (See also: [Indians—Infants—Dependent Children—Interim Shelter Care Proceeding—Emergency Placement—Continued Out-of-Home Placement—Imminent Physical Danger or Harm](#))

[Top](#)

Labor and Employment—Labor Strike—National Labor Relations Act—Tort Claims—Property Destruction—Federal Preemption

Whether the National Labor Relations Act preempts a concrete company’s tort claims against a labor union for common law conversion, intentional interference with business contracts, and civil conspiracy based on the alleged intentional destruction of concrete by union-represented drivers who left their concrete-mixing trucks filled with wet concrete at the beginning of a strike.

No. 99319-0, *Glacier Nw., Inc.* (respondent) *v. Int’l Brotherhood of Teamsters Local Union No. 174* (petitioner). (See also: [Labor and Employment—Labor Strike—Tort Claims—Fraudulent Representation—Negligent Representation—Statement of Existing Fact—Intentional Interference with a Business Contract—Causation](#)).

[15 Wn. App. 2d 393\(2020\)](#).

[Top](#)

Labor and Employment—Labor Strike—Tort Claims—Fraudulent Representation—Negligent Representation—Statement of Existing Fact—Intentional Interference with a Business Contract—Causation

Whether in this tort action by a concrete company against a labor union based in part on the failure of concrete truck drivers to respond to a job dispatch immediately after a labor strike, a union representative’s statement that the “drivers have been instructed to respond to dispatch” was a statement of existing fact so as to support claims for fraudulent and negligent misrepresentation, and whether the company failed to establish that the statement caused the losses associated with the cancellation of a project so as to establish its claim for intentional interference with a business contract.

No. 99139-0, *Glacier Nw., Inc. (respondent) v. Int’l Brotherhood of Teamsters Local Union No. 174 (petitioner)*. (See also: [Labor and Employment—Labor Strike—National Labor Relations Act—Tort Claims—Property Destruction—Federal Preemption](#)).

[15 Wn. App. 2d 393 \(2020\)](#).

[Top](#)

Law Against Discrimination—Real Property Instruments—Discriminatory Provisions—Declaratory Action to Remove—Physical Removal From Instrument—Necessity

Whether [RCW 49.60.227](#) of Washington’s Law Against Discrimination, which authorizes courts to enter declaratory judgments “striking” unlawfully discriminatory provisions from real property instruments, requires a public records custodian in response to a judgment to physically remove the unlawful language from the instrument or whether it is sufficient for the court by order to declare the language void and stricken.

No. 99598-2, *May (petitioner) v. County of Spokane & Dalton (respondents)*.

[16 Wn. App. 2d 505 \(2021\)](#).

[Top](#)

Personal Injury—Parks and Recreation—Statutory Immunity—Elements—Latent Condition—Summary Judgment

Whether in this action for personal injury arising from a bicyclist colliding with a recreational trail bollard, the county that owns and operates the trail system is entitled to dismissal of the suit based on recreational use immunity because the bollard is not a dangerous and latent condition as a matter of law on the basis it is a readily photographable safety feature, or whether there is a genuine issue of material fact as to whether it is a latent hazard because experts testified that the bollard was difficult to see at different times of day.

No. 99359-9, [Schwarz \(respondent\) v. King County \(petitioner\)](#).

[14 Wn. App. 2d 915 \(2020\)](#).

[Top](#)

***Products Liability—Manufacturer—Duty to Warn—Medical Product—Prescription Only—Direct to Consumer Marketing—Learned Intermediary Doctrine—Applicability**

Whether in this products liability action, a manufacturer that promotes a prescription drug through “direct-to-consumer” marketing is exempt from warning the consumer of the drug’s dangerous side effects under the “learned intermediary” doctrine.

No. 99956-2, *Dearinger, et al.* (plaintiffs) v. *Eli Lilly & Co.* (defendant).

Certified from the U.S. District Court, Western District of Washington.

[Top](#)

Right to Counsel—Effective Assistance of Counsel—Conflict of Interest—Failure to Move to Suppress—Failure to Make Legal Argument—Negative Comment on Defendant’s Pro Se Motion to Suppress.

Whether in this prosecution for residential burglary, defense counsel was ineffective in not moving to suppress the evidence seized in a warrantless search, and in stating on the record that the defendant’s pro se motion to suppress was not likely to succeed.

No. 99546-0, [State \(respondent\) v. Elwell \(petitioner\)](#). (See also: [Searches and Seizures—Open View—Immediate Recognition—Necessity—“Virtual Certainty”](#)).

[Unpublished.](#)

[Top](#)

Searches and Seizures—Open View—Immediate Recognition—Necessity—“Virtual Certainty”

Whether in this prosecution for residential burglary, a stolen videogame machine seized without a warrant was admissible under the open view doctrine where the arresting officers claimed to be “virtually certain” that a blanket-covered item that the defendant was pushing on a cart in open view was the stolen machine.

No. 99546-0, [State \(respondent\) v. Elwell \(petitioner\)](#). (See also: [Right to Counsel—Effective Assistance of Counsel—Conflict of Interest—Failure to Move to Suppress—Failure to Make Legal Argument—Negative Comment on Defendant’s Pro Se Motion to Suppress](#)).

[Unpublished.](#)

[Top](#)

**Statutes—Elections—Counties—Ballot Drop Boxes—State Reimbursement—
Unfunded Mandate—Revision—Amendment by Reference—Prohibition**

Whether in this declaratory action involving [RCW 29A.40.170\(2\)](#), which requires Washington counties to install, maintain, and operate a certain number of ballot drop boxes; [RCW 43.135.060](#), the “unfunded mandate” statute; [RCW 29A.04.410 through .430](#) and a recent related amendment concerning state reimbursement of election costs incurred by counties; and article II, section 37 of the Washington Constitution, which prohibits amending a statute by reference to its title; respondent counties are entitled to full reimbursement from the State for costs incurred in installing and maintaining the required election drop boxes.

No. 99230-4, *Wash. State Ass’n of Counties, et al.* (respondents) v. *State* (appellant).

[Top](#)

April Term 2021
Cases Set for Oral Argument

Appeal and Error—Capacity or Right to Sue or Defend—Persons Entitled to Sue—Objection at Trial—Necessity

Whether a party's standing may be challenged for the first time on appeal.

No. 99071-9, *Williams* (petitioner) v. *Traffic Solutions, Inc.* (respondent). (Oral argument 5/13/21). (See also: [Courts—Remedies—Nature and Form—Class Action—Challenge to Claimed System-Wide Speed Zone Violation—Vacation of Traffic Infraction—Necessity](#))

[Unpublished.](#)

[Top](#)

Automobiles—Automobile as Living Place—Impoundment—Fine—Excessiveness

Whether towing and impound fees and costs imposed on a person living in their illegally parked vehicle were excessive or otherwise unconstitutional.

No. 98824-2, *City of Seattle* (respondent/cross-petitioner) v. *Long* (petitioner/cross-respondent). (Oral argument 3/16/21). (See also: [Automobiles—Automobile as Living Place—Impoundment—Homestead Act—Applicability—Failure to File Declaration of Homestead—Effect](#)).

[13 Wn. App. 2d 709 \(2020\).](#)

[Top](#)

Automobiles—Automobile as Living Place—Impoundment—Homestead Act—Applicability—Failure to File Declaration of Homestead—Effect

Whether the Homestead Act bars the city of Seattle from threatening a forced sale of an impounded vehicle if the owner was living in the vehicle but did not file a declaration that the vehicle was used as a homestead.

No. 98824-2, *City of Seattle (respondent/cross-petitioner) v. Long (petitioner/cross-respondent)*. (Oral argument 3/16/21). (See also: [Automobiles—Automobile as Living Place—Impoundment—Fine—Excessiveness](#)).

[13 Wn. App. 2d 709 \(2020\)](#).

[Top](#)

Contracts—Breach—Construction Specifications—Jury Instructions

Contracts—Defense—Defective

Whether in a breach of contract action arising out of a large scale construction project with numerous alleged delays and defects, a jury instruction on the defense of defective specifications must state that the general contractor is not responsible to the owner for loss or damage that results *solely* from defective or insufficient plans or specifications.

No. 99119-7, *Lake Hills Invs., LLC (respondent) v. AP Rushforth Constr. Co., et al. (petitioner)*. (Oral argument 6/24/21).

[14 Wn. App. 2d 617 \(2020\)](#).

[Top](#)

Courts—Remedies—Nature and Form—Class Action—Challenge to Claimed System-Wide Speed Zone Violation—Vacation of Traffic Infraction—Necessity

Whether a class action may be brought in superior court challenging a city's speed limit zone claimed to be unlawful without individual plaintiffs first seeking to vacate their infraction judgments in municipal court.

No. 99071-9, *Williams* (petitioner) v. *Traffic Solutions, Inc.* (respondent). (Oral argument 5/13/21). (See also: [Appeal and Error—Capacity or Right to Sue or Defend—Persons Entitled to Sue—Objection at Trial—Necessity](#)).

Unpublished.

[Top](#)

Criminal—Misdemeanor—Complaint—Citizen Affidavit—Statute of Limitations

Complaint—Initiation—

Whether the filing of an affidavit in support of a citizen's misdemeanor complaint under CrRLJ 2.1(c) is sufficient to initiate a criminal action for purposes of the statute of limitations.

No. 98613-4, *In re Citizen Complaint by: Stout* (petitioner) v. *Felix* (respondent). (Oral argument 3/9/21).

[Top](#)

Criminal Law—Burglary—Elements—Knowledge of Entering or Remaining Unlawfully

Whether in a prosecution for first degree burglary, which is committed when a person “with intent to commit a crime against a person or property therein, . . . enters or remains unlawfully in a building and . . . in entering or while in the building or in immediate flight therefrom, . . . (a) is armed with a deadly weapon, or (b) assaults any person,” [RCW 9A.52.020\(1\)](#), knowledge of the unlawfulness of entering or remaining is an essential element of the crime.

No. 99147-2, [State \(respondent\) v. Moreno \(petitioner\)](#). (Oral argument 6/22/21).

[14 Wn. App. 2d 143 \(2020\)](#).

[Top](#)

Criminal Law—Evidence—Search and Seizure—Consent Search of Cell Phone—Use of Text Messages in Subsequent Communication—Third Party

Whether in this controlled substance prosecution, police violated the defendant’s constitutional right to privacy in communications by sending text messages to him from a separate phone impersonating someone to whom the defendant had previously sold drugs, using information obtained with third party consent from another cell phone.

No. 99062-0, [State \(petitioner/cross-respondent\) v. Bowman \(respondent/cross-petitioner\)](#). (Oral argument 5/20/21). (*See also*: [Criminal Law—Evidence—Search and Seizure—Consent Search of Cell Phone—Use of Text Messages in Subsequent Communication—Trespassory Invasion of Privacy](#), [Criminal Law—Legal Financial Obligations—Indigent Defendant—Community Custody Supervision Fees—Validity—Interest](#)).

[14 Wn. App. 2d 562 \(2020\)](#).

[Top](#)

Criminal Law—Evidence—Search and Seizure—Consent Search of Cell Phone—Use of Text Messages in Subsequent Communication—Trespassory Invasion of Privacy

Whether police committed a “trespassory invasion” of privacy by sending unwanted texts to the defendant’s phone while impersonating someone else.

No. 99062-0, *State* (petitioner/cross-respondent) v. *Bowman* (respondent/cross-petitioner). (Oral argument 5/20/21). (See also: [Criminal Law—Evidence—Search and Seizure—Consent Search of Cell Phone—Use of Text Messages in Subsequent Communication—Third Party](#), [Criminal Law—Legal Financial Obligations—Indigent Defendant—Community Custody Supervision Fees—Validity—Interest](#)).

[14 Wn. App. 2d 562 \(2020\)](#).

[Top](#)

Criminal Law—Legal Financial Obligations—Indigent Defendant—Community Custody Supervision Fees—Validity—Interest

Whether in this criminal prosecution the trial court improperly required the offender to pay community custody supervision fees though the court found the offender indigent, and whether the judgment and sentence improperly imposed interest on legal financial obligations.

No. 99062-0, *State* (petitioner/cross-respondent) v. *Bowman* (respondent/cross-petitioner). (Oral argument 5/20/21). (See also: [Evidence—Search and Seizure—Consent Search of Cell Phone—Use of Text Messages in Subsequent Communication—Third Party](#), [Criminal Law—Evidence—Search and Seizure—Consent Search of Cell Phone—Use of Text Messages in Subsequent Communication—Trespassory Invasion of Privacy](#)).

[14 Wn. App. 2d 562 \(2020\)](#).

[Top](#)

Criminal Law—Plea of Guilty—Plea Bargaining—Breach by State—Duty of State—Implied Duty of Good Faith and Fair Dealing—Applicability

Whether in this criminal prosecution the State violated its duty of good faith and fair dealing in plea bargaining when it agreed to recommend a mid-standard-range sentence but included in its sentencing memorandum several facts that support an aggravated sentence.

No. 98864-1, [State \(petitioner\) v. Molnar \(respondent\)](#). (Oral argument 6/10/21).

[Unpublished.](#)

[Top](#)

Criminal Law—Punishment—Sentence—Presentence Confinement—Credit—Time Served Out of State

Whether in this Washington criminal prosecution the defendant was entitled to credit against his sentence for presentence time served in an Oregon jail while awaiting separate charges in that state, after being served with the arrest warrant for the Washington charges.

No. 99101-4, [State \(respondent\) v. Enriquez-Martinez \(petitioner\)](#). (Oral argument 6/8/21).

[14 Wn. App. 2d 192 \(2020\).](#)

[Top](#)

Criminal Law—Residential Burglary—Lesser Included Offense—First Degree Criminal Trespass—Jury Instructions—To-Convict Instruction—Instruction Defining “Knowledge”—Conflict—State’s Burden of Proof

Whether in this prosecution involving first degree criminal trespass as a lesser included offense, the jury instruction defining “knowledge,” which stated that the defendant need not know that a fact was defined by law as being unlawful, conflicted with the “to-convict” instruction on criminal trespass, which stated that the defendant had to know that entering or remaining in a building was unlawful, relieving the State of its burden to prove that the defendant knew he was entering or remaining unlawfully.

No. 99041-7, [State \(respondent\) v. Weaver \(petitioner\)](#). (Oral argument 5/27/21).

[Unpublished.](#)

[Top](#)

Criminal Law—Right to Counsel—Ineffective Assistance of Counsel—Strategy and Tactics—Evidence—Other Acts and Offenses—Hearsay Statements—Opinion on Guilt—Testimony that Witnesses Were Threatened—Failure to Object—Prejudice

Whether in this prosecution for maintaining a drug dwelling, possession of methamphetamine with intent to deliver, and possession of drug paraphernalia, defense counsel was prejudicially ineffective in failing to object to the admission of the defendant’s criminal history for similar crimes; in failing to object to hearsay testimony about the defendant’s prior bad acts and police officer opinion testimony about the defendant’s guilt; and in failing to object to testimony that witnesses were threatened for their participation in the case.

No. 98928-1, [State \(respondent\) v. Vazquez \(petitioner\)](#). (Oral argument 3/11/21).

[Unpublished.](#)

[Top](#)

Criminal Law—Sex Offenses—Evidence—Prior Acts—Admissibility—Permissible Purpose—Lustful Disposition Toward Victim—Propriety

Whether in this prosecution for sex offenses committed against a child, the trial court properly admitted evidence of instances of the defendant's uncharged sexual conduct toward the child for the purpose of showing the defendant's lustful disposition toward the child.

No. 99396-3, *State* (petitioner) v. *Crossguns* (respondent/cross-petitioner). (Oral argument 6/22/21). (See also: [Criminal Law—Trial—Misconduct of Prosecutor—Arguments to Jury—False Choice—Telling Jury to Decide Whether Witnesses Lied](#)).

[Unpublished.](#)

[Top](#)

Declaratory Judgment—Common Interest Communities—Covenants—Corporations and Business Organizations—Business Judgment Rule—Applicability—Assessment Structure—Reasonableness

Whether in this declaratory action against a homeowners' association involving fee assessments, the reasonableness of the association's adoption of a particular assessment structure depends not only on the process employed and facts considered to reach that decision, but also on the substance of the decision, and whether the business judgment rule may be applied to limit the liability of a corporation such as the association.

No. 99138-3, *Surowiecki* (petitioner) v. *Hat Island Cmty. Ass'n., et al.* (respondents). (Oral argument 5/27/21).

[14 Wn. App. 2d 718 \(2020\).](#)

[Top](#)

Employment—Safe Workplace—Employer of Temporary Worker—Duty of Referring Agency

Whether a temporary worker staffing agency may be cited under the Washington Industrial Safety and Health Act for workplace safety violations that occur at a client work site.

99031-0, *Dep't of Labor & Indus. (petitioner) v. Tradesmen Int'l, LLD (respondent)*;

Consolidated with

99032-8, *Dep't of Labor & Indus. (petitioner) v. Laborworks Indus. Staffing Specialists (respondent)*. (Oral argument 5/25/21)

14 Wn. App. 2d 168 (2020).
Unpublished.

[Top](#)

Indians—Federal Treaties—Water Law—Water Rights and Management—Tribal Water Rights on Reservation—Diversion of Water to Particular Parcels

Whether, in these consolidated water rights cases, the trial court misinterpreted federal treaties and federal law in entering an order and schedule of rights restricting the number of acres on the Yakama Reservation that may be irrigated with water diverted from the Yakima River, or otherwise erred in restricting the affected parties' surface water use.

No. 99373-4, *Wash. Dep't of Ecology (petitioner) v. Acquavella, et al. (respondents)*. (Oral argument 6/22/21).

[Top](#)

Insurance—Consumer Protection—Acts of Insurer—Right of Action—Filed Rate Doctrine—Effect—Applicability

Whether in this action claiming that a mortgage lender overcharged for force-placed insurance, the filed rate doctrine applies to shield the defendant from liability because it passed through to the borrower the rate approved by a governing regulatory agency.

No. 99377-7, *Alpert* (plaintiff-appellant) v. *Nationstar Mortg., LLC & Harwood Serv. Co.* (defendants-appellees) and *Am. Sec. Ins. Co.* and *Guaranty Ins. Co.* (defendants). (Oral argument 6/24/21).

Certified from U.S. Court of Appeals, 9th Circuit.

[Top](#)

Juveniles—Parental Relationship—Dependency—Placement—Child’s Preference—Relatives—Denial—Validity

Whether in this dependency action involving a Black child, the Department of Children, Youth and Families and the trial court improperly disregarded the child’s wishes to be placed with his long-term relative caretakers.

No. 99301-7, *In re the Dependency of K.W.* (petitioner). (Oral argument 6/10/21).

[Top](#)

Juveniles—Parental Relationship—Termination—Elements—Services “Reasonably Offered”—Parent’s Alleged Cognitive Impairments—Tailored Services—Professional Cognitive Assessment—Necessity

Whether, for purposes of supporting a petition to terminate a parent’s parental rights under chapter [13.34 RCW](#), the Department of Children, Youth, and Families, was required to prove that it provided or offered to provide a parent with alleged cognitive impairments a professional cognitive assessment.

No. 98905-2, *In re Termination of Parental Rights to M.A.S.C.* (Oral argument 3/16/21).

[Unpublished.](#)

[Top](#)

Juveniles—Termination of Parental Rights—Case Title—Changing Title in Court of Appeals—Use of Parents’ Full Names in Case Title—Open Courts—Right to Privacy

Whether in this action to terminate parental rights, court rules and open courts principles allowed the Court of Appeals to unilaterally change the case title as used in the trial court to include the mother’s full name.

No. 98965-6, *In re the Welfare of K.D.* (Oral argument 5/13/21).

[Unpublished.](#)

[Top](#)

Landlord and Tenant—Actions—Forcible Entry and Detainer—Availability—Early Termination of Lease

Whether unlawful detainer under [RCW 59.12.030\(1\)](#) is available to the owner of leased premises who exercises a right under the lease agreement to early termination.

No. 99180-4, *Spokane Airport Bd. (petitioner) v. Experimental Aircraft Ass’n Chapter 79 (respondent)*. (Oral argument 5/20/21).

[Unpublished.](#)

[Top](#)

Negligence—Premises Liability—Business Premises—Knowledge of Danger—Knowledge or Notice in General—Foreseeability Exception—Applicability

Whether in this premises liability action claiming injury from a slip on a wet floor in a retail establishment, the foreseeability exception to the requirement that the defendant have notice of the hazard applies, such that the plaintiff does not have to prove actual or constructive notice of the specific dangerous condition if the condition was reasonably foreseeable in light of the nature of the business.

No. 98726-2, *Johnson (petitioner) v. State of Wash. Liquor & Cannabis Bd. (respondent)*. (Oral argument 3/9/21).

[Unpublished.](#)

[Top](#)

Negligence—Wrongful Death—Duty—Existence—Breach of Duty—Proximate Causation

Whether, in this negligence action involving a wheelchair-bound adult who received certain care services in his private apartment and died in an accidental fire of unknown origin, the Department of Social and Health Services or Lewis Mason Thurston Area Agency on Aging owed the adult a protective duty of care, and whether the trial court erred in ruling on breach of duty and proximate causation as a matter of law.

No. 99243-6, *Turner (appellant) v. Wash. State Dep't of Soc. & Health Servs., et al. (respondents)*. (Oral argument 3/11/21).

[Top](#)

Personal Restraint—Prisons—Conditions—Cruel Punishment—COVID-19

Whether the conditions of confinement for an elderly inmate in poor health constitute cruel punishment in violation of article I, section 14 of the Washington Constitution in light of the ongoing COVID-19 pandemic.

No. 99344-1, *In re Pers. Restraint of Williams* (petitioner). (Oral argument 3/11/21).

[476 P.3d 1064 \(2020\).](#)

[Top](#)

Statutes—Standing—Representational Standing—Taxation—Business and Occupation Tax—Surtax—Validity—Dormant Commerce Clause

Whether respondents had standing to challenge [RCW 82.04.29004](#), which imposes an additional business occupation tax on certain financial institutions, and if so, whether the statute discriminates in effect and in purpose against interstate commerce in violation of the dormant commerce clause of the United States Constitution.

No. 98760-2, *Wash. Bankers Ass’n, et al.* (respondents) v. *State, et al.* (appellants).
(Oral argument 5/25/21).

[Top](#)

Statutes—Veto—Partial or Item Veto—“Section”—Legislative Designation—Effect—Appropriation Items—What Constitutes—Budget Provisos—Appropriation—Validity—Substantive Law

Whether under article III, section 12 of the Washington Constitution, the governor lacked authority to veto seven provisions within a section of the legislature’s 2019-2021 transportation budget, all of them prohibiting the Department of Transportation from considering fuel type in selecting recipients of department grants, because each vetoed provision is less than an entire section, the provisions are not appropriation items subject to the line-item veto, and the provisions do not constitute improper substantive law within the budget bill.

No. 98835-8, *Wash. State Legislature* (respondent) v. *Inslee* (appellant). (Oral argument 6/8/21)

[Top](#)

Trial—Due Process—Fair Trial—Implicit Bias—Motion for New Trial—Evidentiary Hearing—Necessity

Whether in this personal injury action, the trial court should have held an evidentiary hearing after the plaintiff, who is African American, moved for a new trial claiming that defense counsel, the court, and the jury displayed implicit racial bias.

No. 97672-4, *Henderson* (petitioner) v. *Thompson* (respondent). (Oral argument 3/16/21).

[Top](#)

Unlawful Detainer—Lease—Expiration—COVID-19—Centers for Disease Control—Eviction Moratorium—Applicability

Whether in this unlawful detainer action a tenant whose lease has expired may claim the protections of a temporary eviction moratorium ordered by the Centers for Disease Control in response to the COVID-19 emergency.

No. 99249-5, *Nyman* (respondent) v. *Hanley, et al.* (appellants). (Oral argument 5/13/21).

[Top](#)
